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Held at the Parque Central, Caracas,
on Wednesday, 7 August 1974, at 3.25 p.m.

Chairman:	Mr. AGUILAR	Venezuela
Rapporteur:	Mr. NANDAN	Fiji

CONTENTS

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AS THIS RECORD WAS DISTRIBUTED ON 9 AUGUST 1974, THE TIME-LIMIT FOR CORRECTIONS WILL BE 16 AUGUST 1974.

The co-operation of participants in strictly observing this time-limit would be greatly appreciated.

COASTAL STATE PREFERENTIAL RIGHTS OR OTHER NON-EXCLUSIVE JURISDICTION OVER RESOURCES BEYOND THE TERRITORIAL SEA.

Mr. LEGAULT (Canada) said that he wished to present some further elaborations on document A/CONF.62/L.4 with regard to fisheries.

Under current conditions, the exercise of the traditional freedom of fishing could lead to a total collapse of fishing resources. A policy of wise management was therefore needed. Within its economic zone, the coastal State must have the right to ensure the conservation of fishery resources in accordance with agreed principles. One of those principles was the full utilization of fish stocks, since in a hungry world waste could no longer be justified. The coastal State must also have the right to take all the fish it was capable of using, on its own terms and under conditions which would permit the expansion of its fisheries. The coastal States should and, no doubt, would allow foreign States to take the portion of the allowable catch which it was itself incapable of using, subject to the sovereign rights, management, control and regulations of the coastal State. Special consideration should be given to the needs of neighbouring States in a region, especially the developing and land-locked States. Only in that way would fishing resources and the interests of coastal communities which depended on those resources be protected. The concept of an economic zone provided for such rights of a coastal State over its living resources.

Where stocks of fish lived both within and beyond the economic zone, scientific management required that such stocks be managed as a whole. The draft articles on fisheries (A/AC/SC.II/L.38) which Canada had sponsored, together with five other delegations, in the Sea-Bed Committee in 1973, offered such an approach.

Effective conservation measures were needed with regard to anadromous species such as salmon, including regulations to protect the fishes' environment so as to permit spawning. Regulations should require that the fish be harvested at an appropriate size and age so as to obtain the maximum benefit. Special conservation and management measures to protect the fresh water environment where those fish spawned and where man's activities were a constant threat to them were also needed. Salmon were born in fresh water and returned to their place of origin. Scientific evidence demonstrated that the

(Mr. Legault, Canada)

salmon's growth at sea continues in the estuaries as it returns to spawn. Yields would be highest therefore if salmon were caught close to their home streams.

The maintenance of clean, unobstructed rivers was a basic prerequisite for the continued production of salmon. Pollution in rivers, estuaries, and inland waters as well as off-shore pollution, was a real threat especially to young salmon. Only the State of origin could protect the fresh water habitat of the species, but such action entailed high expenditures and sacrifice in the form of research, fisheries administration, and the loss of the benefit of other uses of those waters. In Canada alone the cost was in the hundreds of millions of dollars. Therefore provisions should be made to take into account the special interests of States of origin, like Canada, in the total management of anadromous species in their rivers. Such provisions could be harmonized with the interests of other coastal States, and his delegation was willing to take into account existing arrangements provided that they respected the special interests of the State of origin.

Mr. BEN ALEYA (Tunisia) said that the developing countries had sought the inclusion of an item on preferential rights in the agenda of the Sea-Bed Committee in August, 1972 as a temporary compromise in the hope that countries which still had doubts about the new concept of the economic zone would with time come around to accepting it. Since that time, many countries including the great Powers themselves had demonstrated much goodwill in coming around to accept the exclusive sovereignty of coastal States over the resources of the economic zone. His delegation had therefore been surprised by the submission of document A/CONF.62/C.2/L.40 by eight countries of the European Economic Community which in effect took away any meaning from the exclusive economic zone.

The sponsors of that document apparently wished to perpetuate an anachronistic situation and to ignore the other drafts submitted to the Conference aimed at establishing a new order in accordance with the aspirations of the majority of the world's peoples.

A certain paternalism towards the developing countries was also discernible in that draft. The developing countries, however, had consulted among themselves and

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(Mr. Ben Aleya, Tunisia)

adopted a common position both within the Organization of African Unity and the Second Committee. Their legitimate aspirations should therefore have been taken into account by the sponsors of document A/CONF.62/C.2/L.40.

The draft articles on fisheries contained provisions particularly favourable to the developed countries and to the rights they had acquired in the fishing zones of coastal States. That document was unacceptable and could not serve as the basis for any negotiations. In particular, articles 8, 9 and 12 were not acceptable to his delegation, and he urged delegations which had unequivocally endorsed the concept of the exclusive economic zone to study them closely.

The draft articles on fisheries made mention of regional co-operation. His delegation had already endorsed such co-operation and was ready to promote it on a regional level for the benefit of all States and in particular the land-locked and developing countries. However, for such co-operation to be effective and willingly accepted it was necessary to recognize the interests and rights of every country, including the right of sovereignty over the resources of the economic zone.

The preamble of document A/CONF/62/C.2/L.40 stated that the draft articles did not necessarily reflect the final views of its sponsors. His delegation hoped therefore that the final views of the sponsors of that document would be formulated with a greater sense of justice and realism.

Mr. OGUNDERE (Nigeria) said that together with the issue of the limit of the territorial sea, the resolution of the fisheries issue would in all probability determine the success or failure of the Third United Nations Conference on the Law of the Sea. The rate of world population growth, especially in Africa, was so high that developing States were turning to the resources of the sea in the hope of feeding their populations and earning foreign exchange for their development projects. It was not surprising therefore that they regarded the distant water fishing fleets of the great maritime Powers with feelings of envy and anger. Moreover, such feelings were not confined to the developing world as the "Cod War" between the United Kingdom and Iceland had demonstrated.

(Mr. Ogundere, Nigeria)

Since the fisheries in its coastal waters were rather poor and its population large, Nigeria had the greatest interest in the orderly resolution of the fisheries question on the basis of justice and equity. Nigeria and all the other African States had endorsed the exclusive economic zone as a just basis for the resolution of the fisheries issue. His delegation was confident that African coastal States with rich fisheries off their coasts would allow neighbouring land-locked States to exploit surplus stocks on a mutually agreed basis.

His delegation had submitted draft articles on the exclusive economic zone in document A/CONF.62/C.2/L.21/Rev.1 which established the exclusive rights of the coastal State to explore and exploit the renewable living resources of the sea and the sea-bed. The draft articles also contained provisions for the exclusive right of the coastal State for the management, protection and conservation of the living resources of the sea and the sea-bed taking into account the recommendations of the appropriate international or regional fisheries organizations. Article 2 provided for the competence of all States, subject to an appropriate bilateral or regional arrangement or agreement, to exploit an agreed level of living resources of the zone. Paragraph 3 of that article recognized the right of land-locked and geographically disadvantaged States to explore and exploit the living resources of the exclusive economic zones of neighbouring coastal States subject to appropriate bilateral or regional arrangements or agreements. Such provisions were in line with the OAU Declaration on the Issues of the Sea.

His delegation viewed with regret and dismay the proposal of eight States of the European Economic Community (A/CONF.62/C.2/L.40). Those draft articles smacked of neo-colonialism since they were based on the premise that the coastal States were forever under-developed, incompetent and incapable of managing such complicated matters as their coastal fisheries. The legal régime of preferential rights which that document would establish would take away from poor coastal States their means of livelihood. Articles 1, 7, 8, 9, 13, 14 and 16 provided evidence to support that conclusion. As an embodiment of the outmoded coastal State preferential rights system, the proposal in document A/CONF.62/C.2/L.40 should be definitively rejected.

(Mr. Ogundere, Nigeria)

The proposal of six socialist States (A/CONF.62/C.2/L.38) embodied various acceptable provisions such as articles 1, 2, 8, 12 and 13. Other provisions were particularly unacceptable, for example articles 5, 11 and 14.

The exclusive economic zone was a zone in which the coastal State had all the rights and competences including ancillary ones to explore and exploit all the resources whether living or non-living and to enact laws to regulate those activities. His delegation considered inadmissible any provisions of a convention which sought to transfer any of those rights in any form to other States.

Mr. VINDENES (Norway) said that the inclusion of the question of preferential rights as a separate item in the list of subjects and issues had led to a certain amount of confusion and misunderstanding since in practice that question was inseparable from the question of economic zones. Economic zones and preferential rights represented alternative answers to the question of coastal State rights to the resources of the sea in an area adjacent to the territorial sea. The Norwegian delegation clearly favoured the economic zone.

The draft articles in document A/CONF.62/C.2/L.40 were substantially closer to the preferential rights system than to the economic zone concept. Despite the fact that those articles made use of the term "the zone" which was of yet undetermined breadth and listed certain rights for the coastal State within that zone, a closer examination of key articles revealed that very little remained of the zonal approach.

Although article 8 provided that, in its zone, the coastal State might reserve for vessels flying its flag that portion of the allowable catch they were able to take, paragraph 2 eroded that right by specifying that the coastal State should take into account the right of access of States which had habitually fished in the zone, which led to the inescapable conclusion that the rights of States which had habitually fished in the zone did not relate merely to that part of the allowable catch which exceeded the fishery capacity of the coastal State. Thus for the purpose of allocating the allowable catch, the distant water fishing fleets of other States were on an equal footing with the fishing fleet of the coastal State itself.

All decisions of the coastal State relating to the implementation of provisions of the draft articles would be subject, if challenged, to a special committee of five

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(Mr. Vindenes, Norway)

members whose decisions would be binding on the parties concerned, not only with regard to decisions on allocation, but conservation measures as well. Given the lack of precision of the legal norms which the special committee would have to apply, it would become more of a regulatory body than a judicial tribunal. His delegation therefore rejected the mandatory reference of disputes arising from the exercise of coastal States' rights to a third party judgement of the type proposed in document A/CONF.62/C.2/L.40.

Article 12, relating to the enforcement powers of the coastal State, further illustrated the divergence between the economic zone approach and that of document A/CONF.62/C.2/L.40. Even in cases of flagrant violation of its regulatory regulations, the coastal State would not normally be able to prosecute offenders. It could only report the case to the flag State in the hope that the latter would take the necessary action. Norway's experience in that connexion gave little reason for confidence in such a procedure.

The initial reaction of his delegation to the draft articles on the economic zone contained in document A/CONF.62/C.2/L.38 was that they were a constructive contribution to the work of the Conference, while undoubtedly many provisions required further elaboration, clarification and negotiation. Acceptance of the formula in article 12 whereby the coastal State should determine the allowable annual catch of each species in accordance with the recommendations of the competent international fisheries organization amounted to a relinquishment by the coastal State of a right it already had under the statutes of the regional fisheries organizations concerned to declare itself not bound by the recommendation of those organizations. Given the danger that the organizations concerned could with the necessary two-thirds majority recommend a total allowable catch higher than that considered responsible by the coastal State, his delegation would not be prepared to accept a formula which made such recommendations automatically binding. A coastal State must be free to introduce stricter conservation measures in the economic zone than those considered necessary by the regional organization.

Mr. KLIMI (Ghana) said that the item under consideration was of vital importance to his delegation as Ghana relied heavily on fishing as a means of

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(Mr. Klimi, Ghana)

livelihood and a source of food. He therefore supported the concept of the exclusive economic zone, which recognized the competence of the coastal State over the resources of that zone and placed fishing in the zone under the jurisdiction of the coastal State. Although he did not oppose the formulation of rules and regulations governing fisheries, he stressed that such provisions should not defeat the purposes for which the economic zones were to be established. He questioned the need for the consideration of item 7, for he agreed with the representative of Iceland that the concept of preferential rights was supported only minimally by historical usage. He also pointed out that the Declaration of the Organization of African Unity on the issues of the law of the sea did not envisage the economic zone as part of the high seas. It was important to defend the interests of land-locked developing coastal States and other disadvantaged States by giving them rights in the economic zones of neighbouring coastal States. Those States which relied heavily on fishing close to the coasts of other States should be granted licences, which should, however, be granted on reasonable conditions, unlike the old colonialist agreements. One condition could be that the State wishing to fish would provide technology to the coastal State concerned. He welcomed the pragmatic approach taken in provisions for regional and subregional agreements on fishing. There was a need for special provisions for migratory and anadromous species and also for special provisions to prevent the disappearance of certain species. Any such provisions should, however, be in keeping with the principle of the economic zone and the principles embodied in the Declaration of the Organization of African Unity.

Mr. GUSTAFSSON (Finland) recalled that his delegation had already stated its views on fisheries in the Sea-Bed Committee. A substantial part of fishing in Finland took place in the Baltic Sea in the vicinity of the coast of Finland; fishing vessels thus usually exploited only those stocks which were close to, or within, the four-mile territorial sea, although some vessels were engaged in herring fisheries in the North Atlantic. The Baltic Sea area was a disadvantaged region and all or most of the States bordering on it were disadvantaged. He believed that individual States in a disadvantaged region should be entitled to participate in the exploitation of the living resources of the economic zone to be established in respective regions as proposed in document A/CONF.62/C.2/L.39 sponsored by 21 delegations including his own. Fishing in the Baltic Sea was important for Finland and in order to secure the fishing industry and facilitate its development, his Government had recently proposed that a

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(Mr. Gustafsson, Finland)

fishery zone be established to a maximum limit of 12 miles from the baseline of the territorial sea, thus providing an eight-mile fishery zone.

In that connexion he noted that the package deal would probably provide for a maximum 12-mile territorial sea. Within that zone a State might decide to exercise only limited sovereignty, for example by establishing a fishery zone. Such a zone would not be in the same category as the economic zones to be established beyond the 12-mile limit, and he hoped that the future convention would state that in a specific article. He regarded such a provision as being as important as the inclusion of the rules of the Geneva Convention concerning the contiguous zone, which had been suggested by some representatives.

The freedom of fishing, for coastal and non-coastal States, listed as one of the freedoms of the high seas in the Geneva Convention on the High Seas, should be upheld in any future convention on the law of the sea. However, careful management was needed to maintain fish stocks, and that should be provided by regional and sectoral fisheries organizations. Such organizations existed in most areas, but the powers of the various fishery commissions were not extensive enough.

Referring to the two documents before the Committee (A/CONF.62/C.2/L.38 and L.40), he noted that article 1 of the second document reaffirmed the present international law that all States should have the right to allow their nationals to engage in the exploitation of the fishery resources of the sea, which was, in his view, an essential provision. The interests of States which had habitually fished in the coastal State's fishery zone and the interests of developing and land-locked countries were taken into account in article 8 in a way that partly met the concerns of his delegation. Special provisions were included for coastal States whose economy depended heavily on fisheries. Regional arrangements and regional and sectoral organizations were also dealt with in the draft articles of document A/CONF.62/C.2/L.40. Regional organizations should be given a position of importance in order to achieve rational and efficient management of fisheries to ensure the maintenance of maximum yield and the conservation of fish stocks.

Commenting on the draft article contained in document A/CONF.62/C.2/L.37, providing for the regulation of the exploitation of anadromous species through agreement among interested States or through the appropriate intergovernmental fisheries organizations, he said that the interests of the State of origin and the interests of other coastal States should be taken into account. He believed that the draft article provided the basis for a fair compromise on that matter.

Mr. BAYONNE (Congo) observed that there was a very close link between the question of fisheries and that of the economic zone, the solution of the first question depending on the solution of the second. For example, protection of the living resources of a coastal State could be envisaged only within the framework of a 200-mile maritime zone placed under its sovereignty. The two documents (A/CONF.62/C.2/L.38 and L.40) submitted to the Committee confirmed that view, for they reflected the concern of the sponsors to maintain hegemony of the seas, continue plundering the resources of the developing countries and maintain imperialist and neo-colonialist domination; those two paternalistic drafts were unacceptable to his delegation. If accepted, they would simply institutionalize the intense pressure of major fishing States on the new fishing industries of developing countries. Sixty per cent of the total fish catch in 1970 had been caught by a few developed countries accounting for one third of the world population, while the other two thirds of the world population had had only 40 per cent of the total fish catch. The fishing industries of developing countries constituted a major element of the development effort, and were to be used to raise the standard of living, increase food supplies and provide new employment. The provisions in the drafts before the Committee, however, did not meet those concerns but would simply increase the gap between the developed and developing countries.

Mr. BARILE (Italy) reaffirmed his delegation's position that the economic zone was that part of the high seas beyond the territorial sea in which the coastal State had certain specific economic rights. His delegation was one of the sponsors of document A/CONF.62/C.2/L.40 which gave coastal States special rights and provided for the implementation of the basic principle of the exploitation of the resources of the sea for the benefit of mankind as a whole, and particularly for the benefit of the developing countries.

His position on the contiguous zone was related to his concept of the economic zone. The rights of the coastal State in the economic zone would be purely economic, while its rights in a much more restricted zone would relate to national security, customs, taxation, health and immigration, and the right to guarantee the protection of its territory. If the breadth of the territorial sea was to be reduced and a contiguous zone established beyond it, it should be stated very clearly that the coastal State had different competences over the different parts of the high seas

(Mr. Barile, Italy)

beyond its territorial waters. It would have rights and competences with regard to the protection of its territory in the contiguous zone, while it would have rights and competences with regard to the protection of its clearly defined economic interests in the economic zone measured from the outer limit of the territorial sea. The concept, and the functions of the contiguous zone and the economic zone were thus very different.

The CHAIRMAN announced that the debate on item 7 had now been concluded.

CONTIGUOUS ZONE

Mr. GOERNER (German Democratic Republic), introducing document A/CONF.62/C.2/L.27, co-sponsored by his delegation, said that the draft article on the contiguous zone reflected the current international law in force. Its wording was identical to that of article 24 of the Geneva Convention on the Territorial Sea and the Contiguous Zone. The basic idea of the concept of the contiguous zone was to provide protection for the legitimate interests of coastal States which did not wish to extend their territorial sea to a breadth of 12 nautical miles. It was thus clear that the establishment and recognition of contiguous zones was closely connected with the breadth of the territorial sea. Since every coastal State was entitled, under generally recognized international law, to establish a 12-mile territorial sea in which it exercised full sovereignty, it would seem logical that coastal States which claimed a territorial sea of less than 12 miles should have the right to exercise individual sovereign rights for the protection of their legitimate interests in a zone stretching for 12 miles measured from the baseline. The concept of the contiguous zone was thus based on the voluntary renunciation by some States of the exercise of their sovereign rights and was not directed against the interests of any other State.

With respect to the rights of the coastal State in the contiguous zone, he said they should include the right to control customs, immigration, fiscal and sanitary regulations. The regulations governing the contiguous zone would not affect the right of the coastal State to utilize the living and mineral resources in the zone adjacent to its territorial sea if the concept of the economic zone was incorporated in the new law of the sea.

He could not accept the proposal that coastal States claiming a territorial sea of 12 miles should establish a contiguous zone adjacent to that territorial sea. The

(Mr. Goerner, German Democratic Republic)

exercise of rights such as control of customs, immigration, fiscal and sanitary regulations should be restricted to an area of 12 nautical miles, in the form of the territorial sea or the territorial sea and contiguous zone. Any additional exercise of those rights could seriously interfere with international communication and the freedom of navigation. It was also important that the internationally recognized rights of other States should not be prejudiced by the application by the coastal State of the legal régime of the contiguous zone. With respect to the delimitation of the contiguous zone, he said that the rules of delimitation contained in article 24 of the 1958 Geneva Convention had stood the test of practice; failing agreement between opposite or adjacent coastal States, the principle of the median line should be applied.

Mr. HERRERA (Honduras) said that the contiguous zone had been established as a means of limiting the extent of the territorial sea while recognizing certain competences with regard to the defence of the rights of States in the light of technical progress in navigation. The contiguous zone was regarded as part of the high seas and the competences recognized in that maritime space were formulated to meet the requirements of the development of shipping.

However, circumstances had changed. There appeared to be consensus with regard to the acceptance of a 12-mile territorial sea, which inferred that complementary competences in the contiguous zone were no longer necessary, since such competences now formed part of the inherent territorial rights of States which established a 12-mile territorial sea and although different in form were of the same nature as the rights of such States over their land territory. Furthermore, the concept of the contiguous zone would no longer be necessary when the reasons for its establishment were adequately safeguarded under the concept of the sovereignty of the coastal State over its territorial sea.

The extension of the breadth of the territorial sea was one of the basic issues before the present Conference. A future Convention should contain provision relating to coastal States' claims to inherent rights over the resources in zones adjacent to their territory. A decision should be reached concerning competences which would be maintained even when the traditional concept of the contiguous zone conceived as the high seas, disappeared.

It was necessary to take account of legislation enacted by certain States to establish a contiguous zone beyond the 12-mile [illegible] certain

(Mr. Herrera, Honduras)

competences which were traditionally linked with the concept of the contiguous zone and which were a necessary functional corollary to the States' rights. The inherent right of a State over the resources of its adjacent zones was one of those competences. His delegation considered that the traditional concept of the contiguous zone should disappear on the establishment of an exclusive economic zone and that the original concept of the contiguous zone in the high seas could be applied to a special zone which was neither territorial sea nor high seas. However, his delegation would not oppose the maintenance of a contiguous zone within the economic zone to a limit of six or more miles measured from the seaward boundary of the territorial sea to a limit of not more than 18 miles. In that case, special competences should cover all mandatory measures concerning ships in passage to the sea territory of a coastal State.

He stressed that the disappearance of the traditional concept of the contiguous zone or the emergence of an updated concept of that zone would not affect the functional competences of the State in the control, protection and exploitation of its resources and that together with the competences relating to fisheries and the exploitation of resources, protection of the marine environment, control of scientific research and the security of the coastal State, they formed part of the set of consequences deriving from the inherent sovereign rights of a State over its continental shelf and over the resources in zones adjacent to its territory. The right of hot pursuit would also need to be redefined.

Mr. NIMER (Bahrain) said that he would confine his remarks to the contiguous zone and to the utilization of living resources in the area beyond the territorial waters. He agreed with the view that the establishment of a contiguous zone for particular purposes beyond the territorial waters of a coastal State was not inconsistent with the concept of an exclusive economic zone since the latter, as its name implied, would be an area in which the utilization of resources and other economic matters were the sole concern.

A coastal State's rights in the contiguous zone were of a functional and protective nature. As indicated in article 24 of the 1958 Convention on the Territorial Sea and the Contiguous Zone, the coastal State's powers were confined to the control necessary to prevent infringement of its customs, fiscal, immigration and sanitary regulations and the punishment of infringements of such regulations, which were often committed under cover of the commendable principle of freedom of the high seas.

(Mr. Himer, Bahrain)

The contiguous zone was not a new concept in international sea law. As far back as the seventeenth century, States had had to resort to it in order to enforce their customs and fiscal regulations. Objections to the concept, over the years, had been motivated by fears lest its misuse should interfere with the traditional freedom of navigation on the high seas. But there were no grounds for such fears as long as the freedom of navigation was regulated by an acceptable and universal convention on the law of the sea.

The contiguous zone was very important to coastal States, particularly in areas where there were wide divergences in the prices of commodities and precious materials or where foreign labour was attracted away by better pay or working conditions. Many developing States did not possess the modern technical equipment or the large coastal fleets to protect the whole of their territorial belt from smugglers and infiltrators and to intercept suspicious vessels before they broke through into the territorial zone.

His delegation considered that the régime of the contiguous zone, in accordance with article 24 of the 1958 Geneva Convention, should be maintained; and that its limit should be extended to a distance of 12 miles beyond the territorial waters of the coastal State, in view of the current trend to extend the breadth of the territorial sea and the great advances in the speed and construction of modern ships. The ratio between the contiguous zone and the territorial sea would then be almost the same as the ratio formerly adopted and recognized by international law.

His delegation appreciated the anxiety of many countries, in particular the developing ones, to use the resources of an economic zone to ensure the livelihood of their inhabitants and the development of their economy. However, it had already referred, in connexion with the continental shelf, to the difficulties of allocating economic zones in geographically disadvantaged areas. It was estimated that 68 coastal States - 54 of which were developing States - would rank as disadvantaged with regard to economic zones. His delegation agreed with the many delegations which urged that such inequities should be corrected. It considered that, at least in semi-enclosed seas, and without prejudice to the wishes of friendly neighbouring States, the traditional freedom of fishing beyond the territorial waters of the coastal States or their islands should be maintained for all the nationals of States surrounding such seas, until such time as those inequities had been corrected by mutually accepted regional and subregional arrangements.

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Mr. FRASER (India) asked that the variant proposed by his country, which appeared in volume IV, page 47, of the report of the Sea-Bed Committee (A/9021), should be included in the informal working paper on the contiguous zone. The figure 30 should be inserted in the space in the first line of paragraph 2.

HIGH SEAS

Mr. GALINDO POHL (El Salvador) said that the régime of the high seas had been built up on the basis of customary standards, many of which had been codified in the 1958 Convention on the High Seas. The regulations concerning navigation, overflight and the laying of cables and pipelines were still relevant to present-day conditions though they would need adjusting to ensure that such operations did not adversely affect the marine environment: that was a problem that concerned not only the high seas but marine space as a whole.

The regulations on suppression of piracy and slavery, criminal jurisdiction in the case of collision, the obligation to provide assistance, inspection, and hot pursuit were established practices which needed little modification except in respect of any new zones - such as the economic zone and the international sea-bed area - that might be included in the new convention.

The issues that had to be considered and resolved were: the limits of the high seas; the regulation of fishing; the coastal State's interests in the part of the high seas adjoining its economic zone in so far as the preservation of species and the protection of the marine environment were concerned; and the other freedoms referred to in the last paragraph of article 2 of the 1958 Convention on the High Seas.

That Convention defined the high seas as "all parts of the sea that are not included in the territorial sea or in the internal waters of a State". The new convention should define them as "all parts of the sea that are not included in the internal waters, the territorial sea or the economic zone of a State".

Fishing in the high seas must be governed by regulations that would meet the new circumstances created by current technological development, with its threat of exhausting species. Such regulations could be based on the provisions of article 2 of the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, which defined such conservation as "the aggregate of measures rendering possible the optimum sustainable yield from those resources so as to secure the maximum supplement of food and other marine products". That would entail prohibition of fishing methods destructive to the species and organizing fishing on the basis of objective scientific data to avoid over-exploitation. Access of all States without discrimination to fishing

(Mr. Galindo Pohl, El Salvador)

in the high seas should be expressly assured, with the proviso that it should not result in over-exploitation or depletion or destruction of the resources. Consideration should be given to fishing both in surface and in deep waters, since with the technological advances which had made fishing possible in the deep waters throughout the high seas, it was no longer a valid argument that most edible fish were to be found in waters that were under coastal State jurisdiction.

Special regulations would be needed in certain cases, for example that of anadromous species, since the investment of certain States which had provided suitable nursery conditions must be recognized, while bearing in mind that such species moved through all the seas. Any preferential rights should be very clearly defined if their scope was not to be in doubt. A number of the proposals submitted to the Sea-Bed Committee on anadromous species, while feasible on paper, would in practice give rise to controversy because of their lack of precision. A technical study should be made on the applicability of any such rules.

Some of the proposals which had been submitted to the Sea-Bed Committee and were being considered by the Conference reproduced rules produced by the International Law Commission in the draft convention prepared for the 1958 Conference. The proposals concerning the rights and duties of the coastal State concerning conservation, contained in volume IV of the Sea-Bed Committee's report (A/9021), pages 144-148, were based on a territorial sea and a contiguous zone which together did not exceed 12 miles. With the introduction of a 200-mile economic zone, the situation had changed completely.

The high seas should remain the high seas and no State interests should be recognized in them, only those of the organized international community, which must not be confused with the unorganized international community representing only the interests of certain States. Such interests would be looked after by appropriate international management. With regard to freedom of the high seas, no reference to the "other freedoms recognized by the general principles of international law", in article 2 of the 1958 Convention on the High Seas, was to be found in the International Law Commission's draft, which mentioned only freedom of navigation, fishing, and the laying of cables and pipelines. However, it was clear from the text that that list was not intended to be exhaustive, and he felt that the International Law Commission's text was sufficiently flexible and precise to cover the legitimate uses of the high seas.

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(Mr. Galindo Pohl, El Salvador)

However, the reference to "other freedoms" inserted by the 1958 Conference was not appropriate, for it might be interpreted too broadly. It was preferable to list all the freedoms of the sea in question. Those who supported other freedoms of the sea should explain what other uses of the sea they wanted to protect by means of the wording that had been introduced in 1958.

Mr. WARIOBA (United Republic of Tanzania) said that, on the assumption that the purpose of rational management of the living resources of the seas was to serve the interests of mankind, in terms of both conservation and allocation, he would support a system that would ensure fair distribution of living resources to mankind as a whole - not merely to a small minority. He might submit specific proposals at a later date.

Regarding conservation, the existing system was hopelessly inadequate. Emphasis had been placed, both in the Sea-Bed Committee and at the Conference, on the application of international regulations. That would suggest that there had been a successful trial of the application of international regulations, but the facts were otherwise. The so-called international regulations were made and applied by so-called international commissions or under so-called international conventions which were not in fact international in the sense understood at the Conference. Those commissions and conventions served only a few States whose main interest was not conservation but exploitation of the fish stocks of a region. They were sometimes called regional commissions or conventions, but the term regional, too, had varying connotations. Certain States were carrying on activities in nearly every region: it was hard to believe that they would concern themselves with situations in countries thousands of miles away, in regions other than their own for the primary purpose of conservation. Their primary motive was exploitation pure and simple: conservation occurred to them only after they had plundered resources to the point where they were seriously depleted. That trend must be stopped: the priorities should be reversed, so that conservation would come first.

(Mr. Werioba, Tanzania)

As to how the so-called international regulations were made and applied, the first step was scientific research, usually carried out under the auspices of States, which meant that while most scientists did commendable work they were sometimes hampered by terms of reference designed to serve national interests. The scientists then met under the auspices of the so-called international commissions, their scientific objectivity again in danger of being compromised by national interests, and made recommendations which, if applied, would facilitate conservation. In order to be applied, however, those recommendations had to be accepted by States. In most cases, either they were rejected by some States and thus became inapplicable, or acceptance took so long that application became ineffective for conservation purposes. Even where they were ultimately accepted, enforcement measures were so ineffective that the regulations remained a dead letter and served only the purposes of propaganda.

The real power of enforcement lay with the flag States and so far their performance had been very poor. So many obstacles were put in the way of inspection that it became meaningless. Inspectors were often biased and protected national interests rather than those of mankind as a whole. Moreover, their function was normally limited to verifying whether an offence had been committed, whereas their most important duty should be to prevent offences from being committed in the first place. Worse still, inspection could not be carried out at the crucial moment, namely, when fishing was taking place: the inspector had to wait, even if he believed an offence was being committed. Finally, inspectors were not allowed to inspect below deck or even to inspect the type of fishing gear being used. He had studied the enforcement schemes of some of the so-called international commissions and had been amazed to find that the people who emphasized international regulations were the self-same people who refused to allow proper inspection of their vessels.

In the few cases where violations were reported, action was left to the flag State. Apart from the difficulty of proving a case in a forum far away from the scene of the offence, the fact was that the authorities of the flag States had shown no inclination to take adequate action to encourage conservation. Indeed, their behaviour had led to acts on the part of fishermen that bordered on piracy. Fishermen did not comply with the regulations on allowable catches in the waters of the high seas; trying to institute closed seasons or areas was impracticable and control of gear and techniques was almost

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(Mr. Warioba, Tanzania)

impossible. Fishing in the high seas had become piracy and plunder. In that connexion he welcomed the statements by United States Senators Muskie and Stevens which had been reported in the press.

Urgent and effective international action was needed. Management of the living resources of the high seas must be placed under effective international control. Scientific research should be conducted under the auspices of an international institution so as to free it from rapacious national pressures. Enforcement of regulations should be taken out of the hands of the flag State and placed under international control. Then international regulations would have real meaning, in the same way as State control in areas under national jurisdiction.

Mr. O'DONOGHUE (New Zealand) said that his country was a firm supporter of the economic zone concept and was a sponsor of working paper A/CONF.62/C.2/L.4. That paper did not attempt to cover all aspects of the practical application of the concept and there was one matter of practical significance that deserved special attention under the present item. Generally his delegation believed that the substance of the 1958 Convention on the High Seas was suitable for incorporation in the new law of the sea; but the current international law on hot pursuit, as embodied in article 23 of that Convention, would need amendment to take account of the enlarged jurisdiction that coastal States would acquire as a result of the adoption of the economic zone concept. Under the 1958 Convention, where a foreign ship violated applicable laws and regulations of a coastal State in its internal waters, territorial sea or contiguous zone, the coastal State had the right to engage in hot pursuit into the high seas for purposes of arrest. That provision should now be extended to reflect a coastal State's new jurisdiction within an economic zone of 200 miles. Moreover, if a definite zone of jurisdiction of that extent was accorded to the coastal State, that State should have the power to enforce its relevant laws and regulations applying within that zone. To that end, it was logical, and a practical necessity, that the right of hot pursuit should be afforded from within the 200-mile limit into the high seas, or into an adjacent economic zone, against vessels committing violations of the rights for whose protection the 200-mile limit was established. Various rights should be protected within that

(Mr. Marioba, Tanzania)

spirit, depending on whether such rights related to sovereignty over the territorial sea, to the contiguous zone, or to the protection, in the economic zone as a whole, of resources and the marine environment that supported those resources.

Regarding the practical termination of the right of hot pursuit, he did not envisage that foreign vessels should be able to obtain sanctuary from pursuit by entering the economic zone of their own or a third State. Sanctuary should remain in accordance with the wording of the 1958 Convention, i.e. hot pursuit would cease as soon as the ship pursued entered the territorial sea of its own country or of a third State.

He would welcome comments by other delegations on the question, since the power of hot pursuit was important for adequate control of economic zones. Consideration should also be given to drafting relevant articles and to bringing up to date the 1958 provisions concerning arrest by aircraft in the light of modern technological developments.

Mr. POLLARD (Guyana), speaking on a point of procedure, said that his delegation held the view that the competence of the authority to be established in the international area should not be limited exclusively to the sea-bed but should also include the water column and the resources therein. He suggested that thought should be given to the adoption of a formal procedure whereby the future régime in the international area could be considered in the joint meetings of the First and Second Committees.

The CHAIRMAN said that a general trend had emerged in the discussions in favour of making the powers of the proposed authority applicable to both the sea-bed and the superjacent waters. He invited the Committee to consider how the issue could best be studied and the possibility of holding a joint meeting with the First Committee at an appropriate time.

Mr. ANDERSON (United Kingdom) said that the high seas beyond the proposed extended zones of national jurisdiction would still constitute the largest area of sea in the world. The existing régime, based on freedom of the seas, had served the international community well, though certain criticisms of that régime had been voiced at the present Conference. It was necessary to consider the impact on that régime of the changes in national jurisdiction which might emerge as a result of the

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(Mr. Anderson, United Kingdom)

Conference. Freedom of the seas had never been absolute; it had always been subject to certain regulations. Such regulations should be clearly defined in the proposed Convention. His delegation attached particular importance to freedom of navigation and overflight and would shortly submit proposals on those items.

One of the short-comings of the 1958 Geneva Convention was that the obligations of flag States were not clearly defined. Flag States which claimed certain privileges also had certain duties vis-à-vis the international community. In the case of incidents, the flag State should exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag, in accordance with the provisions of article 5 of the Geneva Convention on the High Seas.

A future convention should contain provisions with regard to ships found trafficking in narcotics and should strengthen existing regulations concerning pirate broadcasting.

While his delegation favoured the retention of as much as possible of the existing freedom of the seas in the area beyond the territorial sea, it considered that the obligations on flag States should be strengthened in order to prevent abuses.

Mr. CISSE (Senegal) endorsed the views expressed by the representative of Tanzania with regard to the fisheries commissions. In many cases the measures they adopted were not adequate. They should genuinely represent the interests of the international community with regard to the protection of the resources in the high seas by means of efficient inspection, and they should take particular account of the interests of developing countries.

Mr. MOVCHAN (Union of Soviet Socialist Republics) said that he understood the high seas to refer to that part of the oceans beyond the limits of the territorial sea, which all States could use freely and in which no State was entitled to exercise sovereignty. The basis of the régime of the high seas was the generally recognized principle of the freedom of the high seas, as codified in the 1958 Geneva Convention on the High Seas. He stressed that the Convention had been adopted unanimously at a conference in which representatives of all continents of the world had participated. His delegation regarded that Convention as a major contribution to the international law of the sea and believed that the basic principles and norms it embodied should be retained.

(Mr. Hovchan, USSR)

The principle of the freedom of the high seas had been a major factor in the development of the world economy and international communications. That freedom had been recognized after a long struggle between the forces of progress and the forces of reaction, and it not only helped to meet the economic needs of mankind and to promote scientific and technological progress, but had become one of the means of implementing the principle of peaceful coexistence between States, including international co-operation and fraternal international assistance to peoples struggling against colonialism and imperialism for peace and democracy.

The freedom of the high seas included freedom of navigation, freedom of overflight, freedom of scientific research, freedom of fishing, freedom to lay submarine cables and pipelines and other freedoms embodied in the principles of international law and the Charter of the United Nations. Due account should be taken, in exercising those freedoms, of the interests of other States. He agreed that new measures providing for the conservation of living resources were now needed.

With regard to the question of international fisheries commissions, he said that any criticism of those commissions, which deserved respect, should be supported by facts and figures and preceded by a careful and objective assessment of their work. The freedom of scientific research and the freedom of fishing should be exercised in the context of the special provisions to be worked out by the Conference on the régime of the economic zone. He understood the economic zone to refer to that part of the high seas in which the coastal State enjoyed clearly defined special economic rights over the living and mineral resources. Proposals had been made by certain representatives that would divide the oceans into two parts, one part under national jurisdiction and the other under international jurisdiction; that approach was a dangerous distortion of the concept of the economic zone. His delegation had accepted the principle of the economic zone and would be willing to contribute to the establishment of economic zones, taking into account the interests of coastal States. The issue of the economic zone should be resolved as part of a package deal, and provision should be made only for the rights of coastal States over the resources of the zone.

His delegation was in favour of a firm régime of the high seas which would prevent any interference with the freedom of the high seas. Some critics of the existing régime had tried to claim that gross violations of the law of the sea by certain States were in fact applications of the current régime of the high seas. He therefore felt it

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(Mr. Movchan, USSR)

would be advisable to spell out some of the existing international legal norms in order to ensure that the new law of the sea to be established would be acceptable to all delegations. The norms contained in the Geneva Convention on the High Seas should be reflected in the working documents of the Committee, since they reflected the views of many countries. They could, however, be supplemented by special provisions concerning the international legal obligations and responsibilities of flag States.

Mr. ARIAS SCHREIBER (Peru) said that in the international zone, States should respect the rights of the international community in the same way as they respected the rights of the coastal States in the 200-mile zone of national jurisdiction. The high seas were not a res nullius but a res communis and the proposed régime should contain adequate provisions governing those areas. In the proposals submitted by the delegations of Peru, Ecuador and Panama to the Sea-Bed Committee in 1973 (A/AC.138/SC.II/L.27) the international seas were defined as that part of the sea which was not subject to the sovereignty and jurisdiction of coastal States and which should be open to use by all States, whether coastal or land-locked, for peaceful purposes. The proposals contained provisions concerning the freedoms to be exercised on the international seas (article 19), the scientific research régime (article 10), and the régime governing installations (articles 11 and 12). Regulations should be formulated to ensure proper international control over fisheries in order to preserve the renewable resources in the international sea. Coastal States had a special interest in maintaining the production of renewable resources in the international sea contiguous to their zone of national jurisdiction. A future régime should contain adequate provisions for the control and elimination of pollution, which endangered the ecological balance in the oceans. The concept of the high seas should be replaced by the concept of international seas. His delegation would provide further details on that point at the proposed joint meeting of Committees I and II to consider the competence of the international authority with regard to the sea-bed and the water column in the international zone.

Mr. WARIOBA (United Republic of Tanzania), speaking in exercise of the right of reply, said that the representative of the Soviet Union had made remarks which were clearly directed at his delegation's criticism of international fisheries commissions. The representative of the Soviet Union had stated that criticism of international organizations should be supported by adequate data. The Tanzanian delegation maintained

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(Mr. Warioba, Tanzania)

that it had made such data in the form of scientific reports, the Conventions establishing those Commissions, and experience gained in areas where they had worked. In the past, his country had praised the fisheries commissions and had recommended them to other States; it would not have done so without proper data. It followed that that data was also valid when those commissions were being criticized. In his statement, he had emphasized the importance of enforcement. It was common knowledge that inspectors were not allowed on board vessels while they were fishing, that they could not go below deck and that they could not inspect gear; his criticism of the commissions had been based, inter alia, on those short-comings. If there was a lack of data concerning the existing regional fisheries commissions, recommendations should not have been made to establish international commissions on the same basis.

Mr. OGISO (Japan), speaking in exercise of the right of reply, said that the representative of Tanzania had referred to a statement by two United States Senators implying that salmon of Bristol Bay origin would be depleted as a result of the fishing practices of Japanese fleets. He wished to clarify that statement as it was misleading in some respects and could lead to misunderstanding.

Japanese fishing fleets only fished up to the line of 175° longitude in the middle of the Pacific Ocean. Most salmon from the Bristol river did not cross that line. At the beginning of the year, scientists had expressed concern that the return of salmon of Bristol origin might be reduced to 5 million fish, which was less than the amount required for reproduction. However, that estimate had been found to be incorrect. Recent surveys had shown that the return was 9.5 million which was entirely sufficient for reproduction purposes. Reports that Bristol-origin salmon had been depleted as a result of Japanese fishing practices were therefore incorrect.

The representative of Tanzania had also referred to Japanese halibut fisheries in that area. The Japanese fishing industry did not fish in areas where halibut were concentrated. Any halibut caught inadvertently was immediately returned to the seas.

Mr. WARIOBA (United Republic of Tanzania), speaking in exercise of the right of reply, said that he wished to make it clear that he had not referred to statements in the press concerning the area mentioned by the representative of Japan; he had said that he shared the same concern as Senators Muskie and Stevens.

The meeting rose at 6.15 p.m.